

Internal Revenue Service

Number: **200813025**

Release Date: 3/28/2008

Index Number: 355.01-00, 367.00-00,
368.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:CORP:03
PLR-134400-07

Date:
December 19, 2007

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Country A =

Country B =

Country C =

Business 1 =

Business 2 =

a =

b =

c =

d =

e =

f =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

x =

Dear :

We respond to your request dated June 20, 2007, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated September 25, October 22, October 23, October 25, and November 16, 2007. The information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies

the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Distributing is incorporated under the laws of Country A. Shareholders A, B, C, D, and E (collectively the “Shareholders”) own approximately a%, b%, c%, d%, and e%, respectively, of the voting common stock of Distributing. Together, these shareholders own all of the outstanding shares of Distributing.

Distributing wholly owns Sub 1, and f% of Sub 3 (less than 80%). Sub 1 wholly owns Sub 2. Sub 1 is incorporated under the laws of Country B and Sub 2 is incorporated under the laws of Country C.

Distributing has submitted financial information indicating that Business 1 and Business 2 (conducted either directly by Distributing or through its subsidiaries in its separate affiliated group (as defined in §355(b)(3)(B) (“SAG”)) each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing and its subsidiaries propose undertaking the following transaction to separate its Business 1 assets from its other assets (those not directly related to Business 1) which will limit financial exposure resulting from the use of special materials in its Business 1 operations and will allow for the concentration of management on distinct product lines.

To achieve these business objectives, Distributing has proposed the following transaction.

- (i) Distributing will determine the tax cost and fair market value of the its assets relating to Business 2 (including the stock of Sub 1) and interest in Sub 3, which will be transferred to Controlled, a newly formed corporation incorporated under the laws of Country A, in exchange for Controlled redeemable voting preference shares (par or stated value equal to the value of the contributed assets) representing at least 80 percent of Controlled’s voting power (hereinafter referred to as the “Contribution”).
- (ii) Simultaneous with step (i), the Shareholders contribute \$x and an amount of their Distributing shares to Controlled in exchange for x Controlled common shares, with each shareholder owning the same percentage ownership of Controlled as their Distributing ownership. The percentage

of common shares held by the Shareholders represented by the value of the of the assets transferred to Controlled over the aggregate common share value, will be transferred pro rata by the Shareholders to Controlled in exchange for the Controlled common shares (hereinafter referred to as the "Distribution").

- (iii) Distributing will redeem from Controlled all of the Distributing common shares held by Controlled in exchange for a non-interest bearing promissory note by issuing a promissory note to Controlled (the "Distributing Note"). Controlled will redeem the preference shares held by Distributing by issuing a similar non-interest bearing note (the "Controlled Note"). Distributing has represented that the Distributing Note will be equal in value to the Controlled Note and the Notes will cancel each other out.

After the proposed transaction Distributing will be engaged in Business 1 and the Controlled SAG will be engaged in Business 2.

The following representations have been made in connection with the proposed transaction:

- (a) The fair market value of the Controlled stock received by each the Shareholders will be approximately equal to the fair market value of the Distributing stock surrendered in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (c) The five years of financial information submitted on behalf of Distributing's SAG with respect to Business 1 and Business 2 is representative of the SAG's present operations, and with regard to such SAG, there has been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and the Controlled SAG will each continue the active conduct of its businesses, independently and with its separate employees.
- (e) The distribution of Controlled stock is being carried out for the following business purposes: risk reduction and concentration of management on Business 1. The distribution of Controlled stock is motivated in whole or substantial part by one or more of these corporate business purposes.

- (f) The distribution of Controlled stock is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) There is no acquisition of Distributing or Controlled (including any predecessor or successor of Distributing or Controlled) that is part of a plan or series of related transactions (within the meaning of §1.355-7) that includes the distribution of Controlled shares.
- (h) No U.S. investment tax credit has been claimed with respect to any property transferred from distributing to the controlled transferee corporation.
- (i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (as determined under section 357(d)) by Controlled.
- (j) The liabilities to be assumed (as determined under section 357(d)) in the transaction and the liabilities to which transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (k) Distributing neither accumulated its receivables nor made extraordinary payables in anticipation of the transaction.
- (l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock.
- (m) Payments made in connection with all continuing transactions, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two companies to the transaction are investment companies as defined in §§368(a)(2)(f)(iii) and (iv).
- (o) The following shareholders of Distributing are "U.S. shareholders" within the meaning of §§ 951(b) and 958(b): Shareholder A and Shareholder B. Together these "U.S. shareholders" own in excess of 50 percent of the shares of Distributing by value and voting power.

- (p) Distributing and Controlled are, and will each be, a controlled foreign corporation ("CFC"), within the meaning of §957(a), immediately before and after the Contribution and Distribution.
- (q) The Contribution is not an exchange described in §§1.367(b)-4(b)(1)(i), -4(b)(2)(i) or -4(b)(3).
- (r) With respect to each of Distributing and Controlled, Distributing shareholders who are "U.S. shareholders" will be section 1248 shareholders, within the meaning of §1.367(b)-2(b), immediately before and after the Contribution and the Distribution.
- (s) At all times before and immediately after the Contribution and the Distribution, neither Distributing nor Controlled has been or will be a passive foreign investment company ("PFIC") as defined in §1297(a).
- (t) The notice requirements of §1.367(b)-1(c) will be satisfied for the Contribution and Distribution.
- (u) None of the proposed transactions will include the transfer of stock of any corporation that has been the U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired "gain recognition agreement" within the meaning of §§1.367(a)-3 and 1.367(a)-8.

Based solely on the information submitted and on the representations set forth above, we hold as follows:

- (1) For Federal tax purposes, the transfer and exchange described in the proposed transaction will be disregarded and treated instead as if (i) Distributing formed Controlled, (ii) Distributing transferred all of its assets and liabilities related to Business 2 (including stock of Sub 1) and Sub 3 to Controlled in exchange for all of the of common stock of Controlled, and (iii) Distributing distributed all of its Controlled common stock to the Shareholders (Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 77-191, 1977-1 C.B. 94; Rev. Rul. 62-138, 1962-2 C.B. 95; Rev. Rul. 57-311, 1957-2 C.B. 243).
- (2) The Contribution followed by the Distribution will constitute a reorganization within the meaning of §368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of §368(b).

- (3) Distributing will recognize no gain or loss upon the Contribution (§§361(a) and 357(a)).
- (4) Controlled will recognize no gain or loss on the receipt of assets in exchange for Controlled stock (§1032).
- (5) Controlled's basis in each asset received from Distributing will be equal to the basis of such asset in the hands of Distributing immediately prior to the transfer (§362(b)).
- (6) Controlled's holding period for each asset received from Distributing will include the period during which Distributing held such asset (§1223(2)).
- (7) Distributing will recognize no gain or loss upon the Distribution (§361(c)).
- (8) The Shareholders will recognize no gain or loss (and no amount will be included in the Shareholders income) upon the receipt of Controlled stock (§355(a)(1)).
- (9) The aggregate basis of the Controlled stock and Distributing stock in the hands of the Shareholders after the Distribution will equal the basis of the Distributing stock held by each respective shareholder immediately before the Distribution, allocated in proportion to the fair market value of each in accordance with §1.358-2(a)(2) (§ 358(a)(1), (b) and (c)).
- (10) The holding period of the Controlled stock received by the shareholders of Distributing in the Distribution will include the holding period of the Distributing stock with respect to which the Controlled stock was received, provided the Distributing common stock was held as a capital asset on the date of the Distribution (§1223(1)).
- (11) Earnings and profits will be allocated between Distributing and Controlled pursuant to §§312(h) and 1.312-10(a).
- (12) The Contribution will be an exchange to which §§1.367(b)-1(c) and -4(a) apply.
- (13) No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of the Contribution (§§1.367(b)-1(b) and -4(b)).
- (14) The Distribution will be a distribution to which §§1.367(b)-1(c), -5(a), and -5(c) apply. If any Distributing shareholder's post-distribution amount (as defined in §1.367(b)-5(e)(2)) with respect to Distributing or Controlled is

less than the Distributing shareholder's pre-distribution amount (as defined in §1.367(b)-5(e)(1)) with respect to Distributing or Controlled, the Distributing shareholder's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, the Distributing shareholder's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce basis below zero, the Distributing shareholder must instead include such amount in income as a deemed dividend from such corporation (see §1.367(b)-5(f)). If any Distributing shareholder reduces their basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock) the Distributing shareholder shall increase their basis in the stock of the other corporation to the extent provided in §1.367(b)-5(c)(4).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the distribution satisfies the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see §355(a)(1)(B) and § 1355-2(d)); and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under §355(e)(2)(A)(ii). Additionally, no opinion is expressed regarding the following: (i) to the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367 applies; (ii) to the extent not otherwise specifically ruled upon above, any other consequences under section 367 on any internal restructuring transaction in this ruling letter; and (iii) whether any or all of the above-referenced foreign corporations are PFICs within the meaning of section 1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of sections 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Mark Weiss
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: